

## RE98R16: Residential Rental - Landlord/Tenant Issues - Part 1

This course is specifically designed in two (2) parts for those real estate brokers and salespersons engaged in the practice of rental brokerage. **Part 1 is geared toward the licensee's knowledge base in dealing with rental property.** With limited exceptions, the rental of real estate requires any individual/s showing a real property and assisting in a rental to be licensed. Although Mandatory Consumer-Licensee Relationship Disclosure is not a requisite in the rental of a property, brokers and salespersons are usually "agents" and need to maintain heightened awareness of the fiduciary duties to a landlord, tenant or both. However, real estate licensees engaged in rentals are required to employ the written fee disclosure. A significant percentage of complaints received by the Division of Professional Licensure relate to residential rental transactions. As licensees, rental agents must maintain professional competency and understanding of the inherent legal obligations. Equally as important agents should have a thorough understanding of the "public accommodations" under the Fair Housing Laws as well as a comprehensive awareness of Massachusetts's consumer protection regulations.

### I. License requirements

- A. License required (M.G.L. c. 112, § 87 DDD ½)
  - 1. "No person shall engage in the business of finding dwelling accommodations for prospective tenants for a fee unless such person is a licensed broker or salesperson . . ."
- B. Management agent under contract **exception** to licensing requirement (M.G.L. c. 112, § 87 QQ)
  - 1. "A managing agent while acting under a contract with the owner of the real estate or the regular employees of such agent acting in his behalf in the regular course of their employment" is not required to be licensed.

### II. Listings for residential leasing

- A. Exclusive (advisedly in writing)
- B. Open, non-exclusive (advisedly in writing but often unwritten)

### III. Fee disclosure requirement: Written disclosure to the prospective tenant

- A. First personal meeting to discuss all rental property
- B. Disclosure to include:
  - 1. Whether the prospective tenant will pay a fee for rental services
  - 2. The amount of the fee
  - 3. Manner and time when the fee is due to be paid
  - 4. Whether or not the fee will be payable regardless if a tenancy is not created
  - 5. Signature of the broker or salesperson including license number and date of notice

- 6. Signature of the prospective tenant, or notation of refusal to sign
- C. The fee disclosure requirement applies to all residential rentals.
- D. The fee disclosure must be kept on file by the broker for three years and subject to audit by the Board.

#### **IV. Leasing process**

- A. Screening tenants / application process / inception
  - 1. Fair housing/rental concerns
  - 2. Section 8-Housing Assistance
  - 3. Lead paint and children
  - 4. Lead paint tenant notification, landlord's rights and responsibilities and 30-day delay to de-lead.
  - 5. Personal credit report only with written authorization.
  - 6. Criminal background check needs written authorization
  - 7. Protection & Security of peoples' personal information is required
  - 8. Advise tenants to secure rental insurance.
  - 9. If a complaint is filed for discrimination or regarding fair housing, the disclosures and information will be considered evidence.
- B. Environmental
  - 1. Lead paint
    - a. Inspection
    - b. Disclosure/tenant notification certification
    - c. Duty to de-lead or encapsulate
    - d. Financial assistance to landlords
- C. Preparation/Delivery of Premises
  - 1. Inspection of premises by owner or agent
    - a. Condition
    - b. Abandoned property - Landlord required to make reasonable effort to return the property.
      - i. Get photos, have a witness and take inventory
    - c. Hold-over tenants
    - d. Board of Health Inspection/Building Department/Appropriate Municipal Authority
- D. Warranties, Safety and Habitability
  - 1. Warranty of habitability (e.g., heat, water, fuel, etc.)
    - a. If tenants pay their own heat, must be in writing in the lease
  - 2. State Sanitary Code (105 CMR 410)
    - a. Sole determinant as to maximum number of occupants
  - 3. Municipal ordinances
  - 4. Safety and security Issues
    - a. railings, lighting, security features, snow removal, steps
  - 5. Use and enjoyment

## **V. Vacation rentals - two types**

- A. Rentals for 100 days or less for vacation or recreational purposes generally exempt from many of the laws regarding residential rentals (M.G.L. c. 186, § 15B)
- B. Rentals for 31 days or less for vacation or recreational purposes are generally exempt from lead paint law requirements so long as no chipping or peeling lead paint exists in the dwelling unit and the tenant has received the short-term vacation rental notification.

### **Authority**

- M.G.L. c. 112, §§ 87PP-87DDD1/2
- 254 CMR §§ 2.00-7.00
- M.G.L. c. 186, § 1-21 (residential rental)
- M.G.L. c. 111, §§ 189A-199B (lead)
- 105 CMR 410 (state sanitary code)

### **Important Cases for Discussion**

- Boston Housing Authority v. Hemingway 363 Mass 184 (1973)
- Berman & Sons, Inc. v. Jefferson 379 Mass 196 (1979)
- Attorney General v. Brown 400 Mass 826 (1987)
- Gnerre v. Massachusetts Commission Against Discrimination 402 Mass 502 (1988)
- Attorney General v. Dime Savings Bank of New York, 413 Mass 284 (1992)
- Cruz Management Company, Inc. v. Thomas 417 Mass 782 (1994)

*Papadopoulos vs. Target* 457 Mass 368

*Attorney General vs Brown* 400-Mass 826

### **Suggested Handouts:**

Information on Get the Lead Out program

Sample paperwork

fee agreement

application

statement of condition

lease

- Landlord Rights and Responsibilities Massachusetts Association of REALTORS® and Massachusetts Office of Consumer Affairs and Business Regulations
- Tenant Rights and Responsibilities Massachusetts Association of REALTORS® and Massachusetts Office of Consumer Affairs and Business Regulations

### **Legal Tactics:**

Tenants Rights in Massachusetts, 6<sup>th</sup> Edition

Massachusetts Law Reform Institute